IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2002

Coram :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM

and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

C.M.A. No.252 of 1995 and C.M.P. No.2505 of 1996

National Insurance Company
Limited, Kumbakonam, rep.
by its Manager. .. Appellant

vs.

1.Pakkiriammal
2.Ponni
3.Minor Priya
4.Minor Thiagarajan Senthil Arul
5.Minor Jenni
6.L. Baskaran .. Respondents

(Minors declared as Majors and
R-1 discharged from guardianship
as per the Orders of the Court
dated 5.3.1996 and 30.1.2002 in
C.M.P. Nos.2506, 2507 of 1996 and
602 of 2002 respectively)

PRAYER : Appeal against the order of the Motor Accidents Claims Tribunal (Sub Court), Nagapattinam dated 29.7.1994 and made in M.A.C.T.O.P. No.128 of 1990.

: ORDER
This Appeal coming on for orders and upon perusing the Memorandum of Appeal, the order of the Lower Court, and the material papers in the case, and upon hearing the arguments of Mr. R.Vedantham for the appellant and of Mr. P. Rathinam for the first respondent as well as Mr. T. Kandasamy for the sixth respondent, and having stood over for consideration till this day, the Court passed the following Judgment :-

J U D G M E N T

P. SHANMUGAM, J.

The Insurance Company, the second respondent before the Motor Accidents Claims Tribunal is the appellant herein. Respondents 1 to 5 filed M.C.O.P. No.128 of 1990 claiming a sum of Rs.5,00,000/- for the death of the husband of the first respondent and the father of respondent 2 to 5.

2. The accident occurred on 24.3.1989 at 10.30 am while the deceased was going in his scooter from Kunnaloor to Thiruthuraipoondi, for his office. One Arunachalam was the pillion-rider. When the vehicle was nearing Nedumbalam Village, a lorry bearing Registration No.TNF-39 76 insured with the appellant Corporation was proceeding, and while overtaking the vehicle, the driver turned the lorry to the right side, hitting the scooter. Consequent on this, Rajamanickam suffered serious injuries, was under treatment at the Government Hospital at Thanjavur from 24.3.1989 to 2.4.1989. Later on, he had to be brought to Chennai and admitted at Vijaya Hospital and one of his legs was amputated. However, he succumbed to the injuries on 8.4.1989. The pillion-rider Arunachalam also succumbed to the injuries on 11.4.1989. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the lorry. Insofar as the fatal accident of Rajamanickam is concerned, the Tribunal fixed the age of the deceased at 48 and considering the fact that he was an Advocate and Panchayat Union President, it fixed his monthly income at Rs.3,000/- and determined the compensation at Rs.3,52,000/- and directed the amount to be paid by the Insurance Company. The appeal is preferred by the Insurance Company only on their liability to indemnify the damages. According to them, as per the terms of the policy Ex.R.1 covering the risk in accident, the liability cannot exceed Rs.1,50,000/- and therefore, they assail the conclusion of the Tribunal that they must indemnify the whole liability.

3. The only point that arises for consideration in this appeal is whether Ex.R.1 policy limits the liability or whether the liability is unlimited. The appellant Insurance Company has filed an additional counter affidavit stating that on verification of the policy, it is found that their statutory liability is Rs.1,50,000/- and that the same had not been increased by payment of additional premium. R.W.2 has stated that the said policy is only an 'Act Premium Policy'. Since no extra premium was paid, as per the Act Policy for the damage to the death, the limt is only Rs.1,50,000/-. Learned counsel for the appellant denied the suggestion that insofar as the third party liability is concerned, there is no limit and he further denied the suggestion that the limitation was only in reference to the property.

4. In terms of Section 95(2)(a) of the Motor Vehicles Act, 1939, the insurance company is obliged to satisfy the liability to an extent of of Rs.1,50,000/- insofar as goods carriage vehicle is concerned. However, the case of the respondents is that inasmuch as the insurance covers third party risk, the liability is unlimited. The question that arises for consideration here is whether on payment of a premium of Rs.240/- towards third party risks (TPR), the liability of the insurance company is unlimited or limited to Rs.1,50,000/-. The Motor Insurance Rating Guide, which sets out the provisions relating to the benefits under motor insurance, has defined the

types of insurance policies. The Liability to Public Risk Policy has been defined as follows:

"Indemnity to the insured against legal liability for claims by the public in respect of accidental personal injury or damage to property caused by the insured vehicle."

The Act Liability Insurance Policy has been defined as follows :
"Indemnity to the insured against legal liability for claims by the public in respect of accidental personal injury and/or damage to any property of third party caused by the insured vehicle in a public place, as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939."

Comprehensive Insurance Policy is defined as follows :
"Loss of or damage to the insured's vehicle by accidental external means or malicious acts, fire, external explosion, lightning, selfignition, burglary, housebreaking or theft. Also whilst in transit by road, rail, inland waterway, lift, elevator or air subject to the limitations mentioned in the policy and liability to the public risks including act liability."

In our case, the policy is admittedly a third party liability insurance policy. Clause 3 states as follows :
"Liability to the Public Risks only and "Act Only" Liability Risks (All India) :

C.C. Not Exceeding Liability to the "Act Only"
Public Risks Only Liability

Over 3000 Rs.300 Rs.250

N.B. 2 : "Act Only" Policies cannot be extended to cover Fire and/ or Theft Risks or other benefits.

COMMERCIAL VEHICLE Schedule of premium

CLASS A (2) GOODS CARRYING VEHICLES - GENERAL CARTAGE (PUBLIC CARRIER) :

Licensed Carrying 'Own Damage' Liability to 'Act Only'
Capacity of the the Public
Vehicle Risks
Exceeding 5080 Rs.850 plus Rs.240/- Rs.200/-
Kgs. (5 Tons) Rs.200 for each
additional 1016
Kgs. (1 Ton) or
part thereof plus
0.70% on I.E.V.

Clause 11 states as follows :
"Additional Benefits Under Commercial Vehicles Tariff (Not Applicable to Motor Trade Road Risks) :
(The benefits mentioned here may not be insured separately but only in conjunction with a "Comprehensive" or "Liability to the Public Risks" Policies only by charging extra premium as stated)
1) Liability to the Public -
The limit of Rs.50,000/- may be increased by payment of an additional premium on the following :

Limit of Liability Scale of rates applic- able	Personal injury- unlimited Property damage- to Rs.1,50,000 Per Vehicle	Personal injury- unlimited Property damage- Rs.3,00,000 Per Trailer	Personal injury- unlimited Property damage- over Rs.3,00,000 Per Vehicle	Personal injury- unlimited Property damage- over Rs.3,00,000 Per Trailer
b) Rs.100 plus Goods Carrying Vehicles General Carriers	Rs.50 for every addl. Rs. 1 lakh or part thereof in excess of Rs.3 lakhs	Rs.150 for every addl. Rs. 1 lakh or part thereof in excess of Rs.3 lakhs	Rs.60 @ Rs.5 for every addl. Rs. part thereof	Rs.150 @ Rs.5 for every addl. Rs. part thereof

N.B. 1) In case where the limit of indemnity under an existing policy exceeds Rs.50,000/-, such limit may be increased in accordance with the scale at an additional premium equivalent to the difference between scale rates for such policy limit and that for the required increased limits.
2) The property damage limit in respect of vehicles rated under Class E may be increased in accordance with the above scale by charging 50% of the rate applicable to (a) All Commercial Vehicles as above.
3) Where unlimited personal injury is required to be covered under an "Act Only" policy in respect of vehicles "Designed as Commercial Vehicles and used for Commercial and private purpose (excluding use for hire or reward)" and registered as such this may granted by charging in the first item of schedule for vehicles appearing at (a) above."

5. As per the definitions of the three types of policies, we find

that each one of them are distinct and separate. The comprehensive insurance policy covers the following risks :
(a) Public risk including Act Liablity
(b) Loss or damage to the vehicle's risk

The Public Risk Policy indemnifies the legal liability in respect of third party accidental personal injury or property damage by the vehicle. The Act Liability Policy covers the third party risks in a public place.

In both the policies, expressions 'legal liability for claims' have been used and in the Act Liability Policy, a further expression 'as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939 has been included. But, none of the policies say that the liability is unlimited. Even in reference to comprehensive policy, it says that the liability is subject to the limitation mentioned in the policy and the liability to the public risk, including act liability. By going through the Schedule of Premium, it is seen that the premium differs from the public risk and the act only liability and the minimum premium payable for goods carrying vehicle for public risk is Rs.240/-. If there has to be additional benefit under commercial vehicles' tariff for a personal injury or unlimited property damage upto Rs.3 lakhs, an additional premium of Rs.150/- is to be paid. The Note under this additional benefit clause makes it clear that the limits of indemnity under the policy may be increased in accordance with the scale. From the above, it is clear that the liability is limited to the extent mentioned under the Act unless and until additional premium is paid.

6. Ex.R.1, the Policy under the Schedule of Premium Column makes the position very clear. The limits of liability are specified therein as follows :
SCHEDULE OF PREMIUM

B : LIABILITY TO PUBLIC RISK - Rs.240/-

Add : for L.L. to authorised non-fare paying passengers as per END.IMT. 14(b)
Limit any one passenger Rs.
Limit any one Accdt. Rs.

Add : for L.L. to paid driver and/or Cleaner as per END.IMT.16 - Rs. 16/-

Add : for increased T.P. limits
Section II 1(i) Unlimited
Section II 1(ii) Rs..... -

Add : for ..... -

COMPREHENSIVE PREMIUM (A + B) - Rs.256/-

Less : 10% Special Discount -

NETT PREMIUM DUE (ROUNDED OFF) - Rs.256/-

As per the policy Ex.R.1, the owner has paid the minimum bonus for third party risks plus Rs.16/- for paid driver and cleaner, but he has not paid additional amount for increased T.P. limits. If he had to get an unlimited legal liability, he should have paid extra premium, which has not been done in this case.

7. The above question has come up for consideration before the Supreme Court in NATIONAL INSURANCE COMPANY LIMITED VS. JUGAL KISHORE (A. I.R. 1998 S.C. 719). Their lordships in that case held that comprehensive insurance of the vehicle and payment of higher premium does not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the A ct. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and a separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature, for instance, with regard to the driver or passenger etc. in excess of statutory liability, if any, is sought to be covered, it has to be clearly specfied in the policy that a separate premium is paid therfor. This is the requirement of the Tariff Regulations framed for the purpose. The Supreme Court held in that case that the insurance company did not undertake in the policy, any liability in excess of the statutory liability. In the absence of payment of additional premium even in the case of comprehensive policy, it was held that the liability under the policy in that case was the same as the statutory liability. The principle laid down by the Supreme Court in the said decision squarely applies to the case on hand.

8. A Division Bench of our High Court, in NEW INDIA ASSURANCE COMPANY LIMITED VS. K. CHANDRA (1991 A.C.J. 386) answered in negative, the question whether in a comprehensive policy, the liability of the insurance company is unlimited. K. Venkataswami J. (as he then was), speaking for the Bench, observed that the liability was limited to the extent of Rs.50,000/- as per the statutory liability, following the decision in Jugal Kishore's case cited supra. In ORIENTAL INSURANCE COMPANY LTD. VS. JALAJA & OTHERS (1995 A.C.J. 829), M. Srinivasan J. (as he then was), speaking for the Bench, referring to the similar clause in the policy, which did not mention any specific amount but which only referred to the Act and says that such amount as is necessary to meet the requirements of the Act, held that the insurance company is not liable to pay anything more tha n the amount limited in the statute unless the policy contains a different provision. A Full Bench of the Kerala High Court, in NATIONAL INSURANCE COMPANY LIMITED VS. ROY GEORGE & OTHERS (1993 A.C.J. 343), held that the insurer is not, under Section 96(1), liable to the claimants for the entire amount covered by the judgment, but only after the extent covered under Section 95(1)(b) readwith Section 95(2) of the Act. Even though the Full Bench was dealing with the 'Act Only Policy' in our case, we

do not find any difference between the third party risk policy and the act only policy insofar as the limits of the liability are concerned. In NEW INDIA ASSURANCE COMPANY LIMITED VS. SHANTHI BAI (1995 A.C.J. 470), the Supreme Court, after referring to Section 95 of the Act, held as follows :

"These were the provisions at the relevant time. These provisions were interpreted by this court in the case of National Insurance Co. Ltd. Vs. Jugal Kishore (cited supra). This court observed that even though it is not permissible to use the vehicle unless it is covered atleast under an 'Act Only' policy, it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is has got comprehensively insured, a higher premium is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf."

.....

"Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liabiilty undertaken by the insurance company in this behalf.

In the present case, therefore, comprehensive policy which has been issued on the basis of the estimated value of the vehicle of Rs.2,80,0 00/-, does not automatically result in covering the liability of third party risk for the amount higher than the statutory limit. A Division Bench of this court in NEW INDIA ASSURANCE COMPANY LIMITED VS. R.K. GEETHA & ANOTHER [I (1999) A.C.C. 535) has taken the view that in the absence of any additional payment of premium, the liability of the insurance company is limited to the extent mentioned in the Act. In NATIONAL INSURANCE COMPANY LIMITED VS. NATHILAL & OTHERS [1999 (1) S.C.C. 552], the Supreme Court held that in the absence of payment of any special premium for the purpose of unlimited liability, the mere fact that in the insurance policy, the column against unlimited liability was left blank could not by itself justify the inference of unlimited liability and ultimately held that the terms of the policy were limited to Rs.1,50,000/-. Their lordships referred and followed the decision in Jugal Kishore's case, referred to earlier. In NATIONAL INSURANCE COMPANY LIMITED VS. ANNAMMA ABRAHAM & OTHERS (1988 A.C.J. 1131), a Division Bench of the Kerala High Court held that in the absence of any evidence about the payment of additional premium, the liability of the insurance company is limited to Rs.50,000/-.

9. Counsel for the claimants and the owner of the vehicle referred to the judgment in NEW INDIA ASSURANCE COMPANY LIMITED VS. PUSHPA KAKKAR (1993 A.C.J. 328), wherein a Division Bench of the Delhi High Court has held that when premium was paid more than the 'Act Only' premium, in the absence of evidence that the liability of the insurance company is limited, despite payment of additional premium, the liability of the insurance company is

unlimited. The Division Bench has taken the view that since Rs.240/- has been charged by the insurance company to cover third party liability, which premium is more than the ' Act Only' premium of Rs.200/-, the liability of the insurance company would be unlimited. The Division Bench did not go into the various provisions of the Act and the tariff rules and also did not refer to the judgments of the Supreme Court referred to earlier.

10. Counsel for the respondents relied on the judgment of the Supreme Court in AMRIT LAL SOOD VS. KAUSHALYA DEVI THAPAR (1998 A.C.J. 531 S.C.) on the question whether the insurer is liable to satisfy the claim for compensation made by a person travelling gratuitously in the car. Relying on the indemnity clause in the policy, it was held that the expression 'Any Person' would include an occupant of the car and therefore, the insurance company is liable.

11. In ORIENTAL INSURANCE COMPANY LIMITED VS. CHERUVAKKARA NAFEESSU & OTHERS (2001 A.C.J. 1), the Supreme Court, following the judgment in Amrit Lal Sood's case, held that the insurance company is liable to pay the claimants, the entire amount awarded with a right to recover from the insured, the excess amount over and above the liability covered under the policy. This judgment is strongly relied on by the respondents' counsel and a direction is sought to the insurance company to pay the entire liability.

12. The above judgment was referred to a Larger Bench and in NEW INDIA ASSURANCE COMPANY LIMITED VS. C.M. JAYA (2002 A.I.R. S.C.W. 259), a Constitution Bench of the Supreme Court considered a question of apparent conflict in the two three Judges' Bench decisions of the Supreme Court namely NEW INDIA ASSURANCE COMPANY LIMITED VS. SHANTHI BAI [1995 (2) S.C.C. 539] and AMRIT LAL SOOD VS. KAUSHALYA DEVI THAPAR [1998 (3) S.C.C. 744]. Their lordships, after considering these judgments, held as follows :

"Their is consistency on the point that in the case of an insured policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Act. In Amrit Lal Sood's

case, the decision in Shanthi Bai's case is not noticed. However, both these decisions refer to the judgment in Jugal Kishore's case and no contrary view is expressed."

Ultimately, their lordships concluded as follows :

"In the premise, we hold that the view expressed by the three learned Judges in the case of NEW INDIA ASSURANCE COMPANY LIMITED VS. SHANTHI BAI is correct and answer the question set out in the Order of Reference as under :- In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to the third party, the insurer would be liable to the extent limited under Section 92 of the Act and would not be liable to pay the entire amount."

13. In the light of the principle laid down by the Constitution Bench

resolving this question, we hold that the liability of the insurance company is limited to Rs.1,50,000/- and the sixth respondent is bound to pay the remaining amount of compensation ordered. The appeal is allowed to that extent. No costs. Consequently, the connected C. M.P. is closed.

Index : Yes 14..02..2002.
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Sd/..

Assistant Registrar

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Sub Assistant Registrar (C.S.)

To

The Subordinate Judge,
Motor Accidents Claims Tribunal
(Sub Court),
Nagapattinam.

P. SHANMUGAM, J.
and
P. THANGAVEL, J.

Pre-delivery Judgment in
C.M.A. No.252 of 1995

Delivered on